

DREW H. WRIGLEY
United States Attorney
by SHON HASTINGS, AUSA
Quentin N. Burdick U.S. Courthouse
655 First Ave. N. - Suite 250
Fargo, ND 58102-4932
(701) 297-7400
shon.hastings@usdoj.gov
Attorney for United States: Jackley,
Kohn, USAO D/SD, FBI, and FBI
employees Barnhart, Oravec, and
Weyand

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
BILLINGS DIVISION

EARLINE COLE, CLETUS COLE, and)	
VERONICA SPRINGFIELD,)	
Plaintiffs,)	
v.)	CV-09-21-BLG-RFC-CSO
)	
FEDERAL BUREAU OF INVESTIGA-)	UNITED STATES'
TION, Billings, Montana Office;)	MOTION TO DISMISS
UNITED STATES ATTORNEY'S)	
OFFICE FOR SOUTH DAKOTA;)	
ERIC BARNHART, in his official and)	
individual capacity, MARTY J. JACKLEY,)	
in his official and individual capacity,)	
MAURA KOHN, in her individual)	
capacity, MATTHEW ORAVEC, in his)	
individual capacity, and ERNEST)	
WEYAND, in his individual capacity,)	
)	
Defendants.)	

Pursuant to Rule 8 and 12 of the Federal Rules of Civil Procedure, the United States of America, by Drew H. Wrigley, United States Attorney for the District of North Dakota, and Shon Hastings, Assistant United States Attorney, acting on behalf of the Federal Bureau of Investigation (FBI); the United States Attorney's Office for South Dakota; Supervisory Special Agent Eric Barnhart, United States Attorney Marty J. Jackley, and Assistant United States Attorney Maura Kohn, in their official and individual capacities; and Special Agent Matthew Oravec and Special Agent Ernest Weyand in their individual capacities; moves this Court for an Order dismissing the Complaint filed in this case because it fails to state a claim upon which relief may be granted. The grounds for this Motion are:

(1) Plaintiffs do not have standing to assert a cause of action for failure to investigate or prosecute a third party;

(2) Plaintiffs failed to allege facts or cite to law sufficient to state a claim for relief;

(3) United States Attorney Marty J. Jackley and Assistant United States Attorney Mara Kohn are entitled to absolute quasi-judicial immunity from suit;

(4) All of the defendants who were named in their individual capacity are entitled to qualified immunity from suit;

(5) Plaintiffs have not met their burden of providing a waiver of sovereign immunity or subject matter jurisdiction over the United States, its agencies or the employees who were sued in their official capacity.

This Motion is based on the Complaint, documents referenced in or embraced by the Complaint, materials that are part of the public record, and all of the files and proceedings in this case.

The undersigned contacted opposing counsel who advised that plaintiffs will be opposing this Motion.

THEREFORE, the United States respectfully requests this Court to grant its Motion and dismiss the Complaint with prejudice.

Dated this 24th day of June, 2009.

DREW H. WRIGLEY
United States Attorney

/s/ Shon Hastings
By: _____
SHON HASTINGS
Assistant United States Attorney
Quentin N. Burdick United States Courthouse
655 First Avenue North - Suite 250
Fargo, ND 58102-4932
(701) 297-7400
N.D. Bar Board ID No. 05084
Attorney for the United States:
Jackley, Kohn, USAO D/SD, FBI, and
FBI employees Barnhart, Oravec and Weyand

CERTIFICATE OF SERVICE
L.R. 5.2(b)

I hereby certify that on June 24th 2009, a copy of the foregoing document was served on the following persons by the following means:

1,2	CM/ECF
_____	Hand Delivery
_____	Mail
_____	Overnight Delivery Service
_____	Fax
3	E-Mail

1. Clerk, United States District Court
2. Jean Bearcrane
Attorney for Plaintiffs
3. Patricia S. Bangert
Attorney for Plaintiffs
pbangertlaw@aol.com

/s/ Shon Hastings

SHON HASTINGS, AUSA
Attorney for the United States:
Jackley, Kohn, USAO D/SD, FBI,
and FBI employees Barnhart, Oravec and Weyand